

09/16/2020

Shirley Faust
CLERKMissoula County District Court
STATE OF MONTANABy: Emily Baze

DV-32-2020-0001166-NE

Marks, Jason

1.00

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Attorneys for Plaintiffs

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

DANIEL LEPIANE, individually and on
behalf of similarly situated JOHN
DOES 1-100,

Plaintiffs,

v.

FNP, INC., d/b/a FIRST NATIONAL
PAWN; F N P of MONTANA, INC.,
d/b/a FIRST NATIONAL PAWN; FNP
of MISSOULA, INC., d/b/a FIRST
NATIONAL PAWN; FNPS, LLC;
FIRST NATIONAL PROPERTIES,
LLC; and DOES 1-5;

Defendants.

Cause No. _____

Dept. No. _____

COMPLAINT

COMES NOW Plaintiffs Daniel LePiane and John Does 1-100 (collectively "Plaintiffs") by and through their attorney of record, St. Peter Law Offices, P.C., for their cause of action against Defendants FNP, Inc. d/b/a First National Pawn; F N P of Montana, Inc., d/b/a First National Pawn; FNP of Missoula, Inc., d/b/a First National Pawn; FNPS, LLC; First National Properties, LLC; and Does 1-5 (collectively "First National Pawn"), allege and state as follows:

1. Daniel LePiane ("LePiane") is a former non-exempt employee of First National Pawn who is a citizen of the State of Montana and resident of Missoula

1 County. His last day of employment for First National Pawn was on or after March
2 21, 2020.

3 2. Plaintiffs John Does 1-100 are non-exempt employees employed by
4 First National Pawn who have been or currently are employed within the past 180
5 days by First National Pawn.

6 3. Upon information and belief, First National Pawn is an integrated
7 entity whose principle business address is 1302 N. 24th St. West #366, Billings,
8 MT 59102.

9 4. Upon information and belief, each of the above-identified First
10 National Pawn entities are agents of each other.

11 5. Upon information and belief, Defendants Does 1-5 are entities are
12 related businesses, franchises, affiliates, subsidiaries, or entities in which named-
13 Defendants had or have an ownership interest.

14 6. Plaintiffs' job duties did not include managing First National Pawn
15 stores, departments, or subdivisions. Plaintiffs did not regularly direct the work of
16 at least two or more other full-time employees. Plaintiffs did not have the authority
17 to hire or fire other employees, nor were their suggestions and recommendations
18 to hire or fire given particular weight.

19 7. Plaintiffs' job duties did not include office or non-manual work directly
20 related to the management or general business operations of First National Pawn.
21 Plaintiffs' primary duty did not include the exercise of discretion and independent
22 judgment with respect to matters of significance.

23 8. Plaintiffs' job duties did not require advanced knowledge, which was
24 predominantly intellectual character or which required consistent exercise of
25 discretion and judgment. Plaintiffs' job duties did not include work requiring
26 invention, imagination, originality, or talent in a recognized field of artistic or
creative endeavors.

9. Plaintiffs' job duties did not include work as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field.

10. Plaintiffs were not customarily or regularly engaged in work away from the place of business First National Pawn directed them to work.

11. Plaintiffs were not paid \$107,432.00 or more in annual compensation.

12. Plaintiffs' job duties did not include work as a police officer, fire fighter, paramedic, or other first responder.

13. Plaintiffs entered into “Work Hour Agreements,” or other employment agreements, which did not reflect the Plaintiffs actual schedule or rate of pay.

14. Plaintiffs were paid a fixed monthly salary, regardless the number of hours they actually worked. The monthly salary did not vary from one month to the next, unless the Plaintiffs earned an annual raise.

15. Plaintiffs were required to arrive at work prior to their designated start time.

16. Plaintiffs were required to stay late at work after their designated end time on a regular basis.

17. Plaintiffs were occasionally required to work on days in which they were scheduled to be off.

18. Plaintiffs were not paid additional compensation for working prior to, after, or on days beyond their designated start and end times.

19. The sum or value in controversy between Plaintiffs and First National Pawn reasonably does not exceed \$5,000,000.00.

COUNT I

20. Plaintiffs incorporate by reference the foregoing statements and allegations as though fully set forth in this section.

1 34. First National Pawn accepted the benefit of not paying Plaintiffs
2 overtime compensation for work in excess of 40 hours during a workweek.

3 **COUNT IV**

4 35. Plaintiffs incorporate by reference the foregoing statements and
5 allegations as though fully set forth in this section.

6 36. First National Pawn has a duty to non-exempt to pay non-exempt
7 employees overtime compensation for hours worked in excess of 40 during a
8 workweek.

9 37. First National Pawn breaches(ed) its' duty when if failed to pay
10 overtime compensation to Plaintiffs for hours worked in excess of 40 during a
11 workweek.

12 38. First National Pawn caused injury to Plaintiffs as a result of First
13 National Pawn's failure to pay overtime compensation for work in excess of 40
14 hours during a workweek.

15 **COUNT V**

16 39. Plaintiffs incorporate by reference the foregoing statements and
17 allegations as though fully set forth in this section.

18 40. First National Pawn violated Mont. Code Ann. §§ 39-3-101, *et. seq.* by
19 failing to pay overtime compensation to Plaintiffs for work in excess of 40 hours
20 during a workweek.

21 41. Mont. Code Ann. §§ 39-3-101, *et. seq.* was enacted to protect non-
22 exempt employees.

23 42. Plaintiffs are non-exempt employees.

24 43. First National Pawn's failure to pay overtime compensation for work in
25 excess of 40 hours during a workweek is the type of injury Mont. Code Ann. §§ 39-
26 3-101, *et. seq.* is intended to prevent.

 44. Mont. Code Ann. §§ 39-3-101, *et. seq.* was intended to regulate
employers like First National Pawn.

WHEREFORE Plaintiffs pray as follows:

1. For special and general damages to be determined at trial;
2. For pre-judgment interest as allowed by law;
3. For assessment of penalties in accordance with Mont. Code Ann. § 39-3-206;
4. For court costs and attorney's fees as allowed by Mont. Code Ann. § 39-3-214;
5. For such other and further relief as this Court may deem just.

DATED this _____ day of September, 2020.

ST. PETER LAW OFFICES, P.C.

By: Michael O'Brien


VERIFICATION

STATE OF MONTANA)
County of Missoula) ss.

Daniel LePiane being first duly sworn upon his oath, deposes and says:

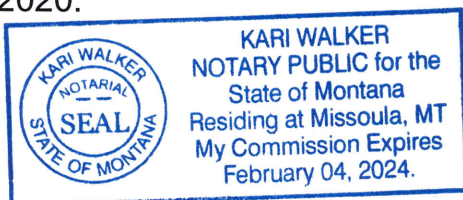
I am the named Plaintiff in the above case matter. I have read the foregoing *Complaint* and know the contents thereof. The same are true of my own knowledge, except as to matters which may have been stated on information and belief, and concerning those matters, I believe them to be true.

reor. The same are true of my own
ch may have been stated on information and
I believe them to be true.



Daniel LePiane

SUBSCRIBED AND SWORN to before me this 15 day of September, 2020.



Notary Public for the State of Montana